

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING ON
of NEW Rules I through XVII)	PROPOSED ADOPTION AND
and the repeal of ARM Title)	REPEAL
17, chapter 8, subchapter 7)	
pertaining to the issuance of)	
Montana air quality permits)	(AIR QUALITY)

TO: All Concerned Persons

1. On March 27, 2002, at 1:00 p.m., a public hearing will be held in Room 35, Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules pertaining to the issuance of Montana air quality permits.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., March 13, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email "ber@state.mt.us."

3. The proposed new rules provide as follows:

RULE I DEFINITIONS For the purposes of this subchapter:

(1) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard), based on the maximum degree of reduction for each pollutant subject to regulation under 42 U.S.C. 7410, et seq. or 75-2-101, et seq., MCA, that would be emitted from any proposed emitting unit or modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such emitting unit or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such contaminant. In no event may application of BACT result in emission of any regulated air pollutant that would exceed the emissions allowed by any applicable standard under ARM Title 17, chapter 8, subchapter 3, and this subchapter. If the department

determines that technological or economic limitations on the application of measurement methodology to a particular class of emitting units would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or operational standard or combination thereof, to require the application of BACT. Such standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means that achieve equivalent results.

(2) "Construct" or "construction" includes a reasonable period of time for startup and shakedown and means:

(a) initiation of on-site fabrication, erection, or installation of an emitting unit or control equipment including, but not limited to:

(i) installation of building supports or foundations;

(ii) laying of underground pipework; or

(iii) construction of storage structures; or

(b) the installation of any portable or temporary equipment or facilities.

(3) "Day" means calendar day unless otherwise stated.

(4) "Emitting unit" means:

(a) any equipment that emits any regulated air pollutant through a stack(s) or vent(s); or

(b) any equipment from which emissions consist solely of fugitive emissions of a regulated air pollutant.

(5) "Existing emitting unit" means an emitting unit that was in existence and operating or was capable of being operated on March 16, 1979, or for which the department had issued a permit by that date.

(6) "Facility" means any real or personal property that is either stationary or portable and is located on one or more contiguous or adjacent properties under the control of the same owner or operator that contributes or would contribute to air pollution, including associated control equipment that affects or would affect the nature, character, composition, amount, or environmental impacts of air pollution and that has the same two-digit standard industrial classification code. A facility may consist of one or more emitting units.

(7) "Install" or "Installation" means to set into position and connect or adjust for use.

(8) "Modify" does not include routine maintenance, repair, or replacement but means:

(a) construction or changes in operation at a facility or emitting unit for which the department has issued a Montana

air quality permit under this chapter, except when a permit is not required under [Rule IV];

(b) construction or changes in operation at a facility or emitting unit for which a Montana air quality permit has not been issued under this chapter but that subjects the facility or emitting unit to the requirements of [Rule II].;

(c) construction or changes in operation at a facility or emitting unit that would violate any condition in the facility's Montana air quality permit, any board or court order, any control plan within the Montana state implementation plan, or any rule in this chapter, except as provided in [Rule IV];

(d) construction or changes in operation at a facility or emitting unit that would qualify as a major modification of a major stationary source under subchapters 8, 9, or 10 of this chapter;

(e) construction or changes in operation at a facility or emitting unit that would affect the plume rise or dispersion characteristics of emissions in a manner that would cause or contribute to a violation of an ambient air quality standard or an ambient air increment, as defined in ARM 17.8.804; or

(f) any change in operation that affects emissions and that was not previously permitted, except that a change in operation that does not result in an increase in emissions because of the change is not a modification.

(9) "Montana air quality permit" means a preconstruction permit issued under this subchapter that may include requirements for the construction and subsequent operation of an emitting unit(s) or facility.

(10) "Negligible risk to the public health, safety, and welfare and to the environment" means an increase in excess lifetime cancer risk of less than 1.0×10^{-6} , for any individual pollutant, and 1.0×10^{-5} , for the aggregate of all pollutants, and an increase in the sum of the non-cancer hazard quotients for all pollutants with similar toxic effects of less than 1.0, as determined by a human health risk assessment conducted according to [Rule XVII]. The department shall also consider environmental impacts identified in any environmental analysis conducted pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, subparts 1 through 3, MCA, in determining compliance with all applicable rules or other requirements requiring protection of public health, safety, and welfare and the environment.

(11) "New or modified emitting unit" means an emitting unit that was not constructed or upon which construction was not commenced prior to March 16, 1979.

(12) "Owner or operator" means the owner of a facility or other person designated by the owner as responsible for overall operation of the facility.

(13) "Potential to emit" means the maximum capacity of a facility or emitting unit, within physical and operational design, to emit a pollutant. Any physical or operational limitation on the capacity of the facility or emitting unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions are not considered in determining potential to emit.

(14) "Routine maintenance, repair, or replacement" means any action taken upon an emitting unit by the owner or operator that is necessary on a periodic basis to assure proper operation of the emitting unit. The term routine does not include activities that:

(a) have associated fixed capital costs in excess of 50% of the fixed capital cost necessary to construct a comparable, entirely new emitting unit,

(b) change the design of the emitting unit, including associated control equipment; or

(c) increase the potential to emit of the emitting unit.

(15) "Secondary emissions" means emissions that would occur as a result of the construction or operation of a facility or emitting unit, but do not come from the facility or emitting unit itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the facility or emitting unit which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) emissions from trains coming to or from the facility or emitting unit;

(b) emissions from any off-site support facility that otherwise would not be constructed or increase its emissions as a result of the construction or operation of the facility or emitting unit.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE II MONTANA AIR QUALITY PERMITS--WHEN REQUIRED

(1) Except as provided in [RULE III] and [RULE IV], a person may not construct, install, modify, or operate any of the following without first obtaining a Montana air quality permit issued by the department:

(a) a new facility or emitting unit with the potential to emit airborne lead in an amount greater than 5 tons per year or a modification to an existing facility or emitting unit that results in an increase in the facility or emitting unit's potential to emit airborne lead by an amount greater than 0.6 tons per year;

(b) asphalt concrete plants, mineral crushers, and mineral screens that have the potential to emit more than 15 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter;

(c) any incinerator, as defined in 75-2-103(11), MCA, and that is subject to the requirements of 75-2-215, MCA;

(d) any facility or emitting unit upon which construction commenced, or was that was installed, before November 23, 1968, when that facility or emitting unit is modified after that date and the modification increases the potential to emit by more than 25 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter; or

(e) any other facility or emitting unit upon which construction was commenced, or that was installed, after November 23, 1968, that is not specifically excluded under [Rule III], and that has the potential to emit more than 25 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE III MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS

(1) A Montana air quality permit is not required under [RULE II] for the following:

(a) residential fireplaces, barbecues, and similar devices for recreational, cooking, or heating use;

(b) mobile emitting units, including motor vehicles, trains, aircraft, and other such self-propelled vehicles;

(c) laboratory equipment used for chemical or physical analysis;

(d) any activity or equipment associated with the use of agricultural land or the planting, production, harvesting or storage of agricultural crops (this exclusion does not

apply to the processing of agricultural products by commercial businesses);

(e) emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power or lighting are temporarily unobtainable or unavailable;

(f) emergency equipment installed in industrial or commercial facilities for use when the usual sources of heat, power, or lighting are temporarily unobtainable or unavailable and when the loss of heat, power, or lighting causes, or is likely to cause, an adverse effect on public health or facility safety. Emergency equipment use extends only to those uses that alleviate such adverse effects on public health or facility safety;

(g) any activity or equipment associated with the construction, maintenance, or use of roads except emitting units for which a permit is required under [Rule II(1)(b) or (c)];

(h) open burning, which is regulated under ARM Title 17, chapter 8, subchapter 6, and an open burning permit may be required under that subchapter;

(i) drilling rig stationary engines and turbines that do not have the potential to emit more than 100 tons per year of any pollutant regulated under this chapter and that do not operate in any single location for more than 12 months;

(j) temporary process or emission control equipment, replacing malfunctioning process or emission control equipment, and meeting the requirements of ARM 17.8.110(7);

(k) routine maintenance, repair, or replacement of equipment and equipment used to perform routine maintenance, repair, or replacement.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE IV MONTANA AIR QUALITY PERMITS--EXCLUSION FOR DE MINIMIS CHANGES (1) A Montana air quality permit is not required under [RULE II] for de minimis changes as specified below:

(a) construction or changed conditions of operation at a facility for which a Montana air quality permit has been issued that do not increase the facility's potential to emit by more than 15 tons per year of any pollutant except:

(i) any construction or changed conditions of operation at a facility that would violate any condition in the facility's existing Montana air quality permit or any

applicable rule contained in this chapter is prohibited, except as allowed in (2) below;

(ii) any construction or changed conditions of operation at a facility that would qualify as a major modification of a major stationary source under subchapters 8, 9, or 10 of this chapter;

(iii) any construction or changed conditions of operation at a facility that would affect the plume rise or dispersion characteristics of the emissions in a manner that would cause or contribute to a violation of an ambient air quality standard or an ambient air increment, as defined in ARM 17.8.804;

(iv) any construction or improvement project with a potential to emit more than 15 tons per year may not be artificially split into smaller projects to avoid permitting under this subchapter; and

(v) emission reductions obtained through offsetting within a facility are not included when determining the potential emission increase from construction or changed conditions of operation, unless such reductions are made federally enforceable.

(b) The owner or operator of any facility making a de minimis change pursuant to (1)(a) above shall notify the department if the change would include addition of a new emissions unit, a change in control equipment, stack height, stack diameter, stack flow, stack gas temperature, source location, or fuel specifications, or would result in an increase in source capacity above its permitted operation.

(c) The following are excluded from the notice requirements of (1)(b) above:

(i) day-to-day fluctuations of the parameters described in (1)(b) above, occurring as a result of the design or permitted operations of the facility, including startup and shutdown of emission sources at the facility; and

(ii) addition, modification, or replacement of pumps, valves, flanges and similar emission sources. The department shall develop, maintain, and update a list of emission sources it believes qualify for exclusion from the notice requirements. Upon request, the department shall provide a copy of the list to interested persons.

(d) If notice is required under (1)(b) above, the owner or operator shall submit the following information to the department in writing at least 10 days prior to startup or use of the proposed de minimis change or as soon as reasonably practicable in the event of an unanticipated circumstance causing the de minimis change:

(i) a description of the proposed de minimis change requiring notice, including the anticipated date of the change;

(ii) sufficient information to calculate the potential emissions resulting from the proposed de minimis change; and

(iii) if applicable, an explanation of the unanticipated circumstance causing the change.

(e) The notice requirements under (1)(d) above do not supersede, or otherwise change, any requirements in 40 CFR Parts 60, 61, or 63.

(2) A Montana air quality permit may be amended pursuant to [Rule XIV], for changes made under (1)(a)(i) above that would otherwise violate an existing condition in the permit. Conditions in the permit concerning control equipment specifications, operational procedures, or testing, monitoring, record keeping, or reporting requirements may be modified if the modification does not violate any statute, rule, or the state implementation plan. Conditions in the permit establishing emission limits, or production limits in lieu of emission limits, may be changed or added under (1)(a), if the owner or operator agrees to such changes or additions.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE V NEW OR MODIFIED EMITTING UNITS--PERMIT APPLICATION REQUIREMENTS (1) The owner or operator of a proposed new or modified facility or emitting unit that is subject to [Rule II], shall, no later than 180 days before construction begins, or if construction is not required, no later than 120 days before installation, modification, or operation begins, submit an application to the department for a Montana air quality permit on an application form provided by the department. The department may, for good cause shown, waive or shorten the time required for filing the application.

(2) The department may provide pre-application consultation and non-binding, advisory opinions regarding any potential issues identified by the owner or operator that may arise regarding the permit application.

(3) A permit application submitted pursuant to this subchapter must contain certification by a responsible official of truth, accuracy, and completeness. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete. The following persons are authorized to sign an

application on behalf of the owner or operator of a new or modified facility or emitting unit(s):

(a) an application submitted by a corporation or a limited liability company must be signed by an individual specified in the corporate bylaws or the limited liability company operating agreement as having the authority to bind the corporation or limited liability company in contracts, liabilities, and other company obligations.

(b) an application submitted by a partnership or a sole proprietorship must be signed by a general partner or the proprietor respectively;

(c) an application submitted by a municipal, state, federal or other public agency must be signed by a principal executive officer, appropriate elected official, or other duly authorized employee; and

(d) an application submitted by an individual must be signed by the individual or the individual's authorized agent.

(4) An application for a Montana air quality permit must include the following:

(a) a map and diagram showing the location of the proposed new or modified facility or emitting unit(s). The map and diagram must also include the location of each associated stack, the property involved, the height and outline of associated buildings, and the height and outline of each associated stack;

(b) a description of the proposed new or modified facility or emitting unit(s), including data on expected production capacity, raw materials to be processed, and major equipment components;

(c) a description of any control equipment to be installed;

(d) a description of the composition, volume and temperatures of the effluent stream, including the nature and extent of air contaminants emitted, quantities and means of disposal of collected contaminants, and the air quality relationship of these factors to conditions created by existing stacks or emitting units or stacks associated with the proposed new or modified emitting unit(s);

(e) normal and maximum operating schedules;

(f) drawings, blueprints, specifications, or other information adequate to show the design and operation of process and air pollution control equipment involved;

(g) process flow diagrams showing material balances;

(h) a detailed schedule of construction or modification;

(i) a description of shakedown procedures to the extent shakedown is expected to affect emissions, and the anticipated duration of the shakedown period for each new or modified emitting unit;

(j) any other information requested by the department that is necessary for the department to review the application and determine whether the new or modified facility or emitting unit(s) will comply with applicable standards and rules;

(k) information regarding site characteristics necessary to conduct an assessment of impacts under the Montana Environmental Policy Act, 75-1-101, et seq., MCA, as required on the application form; and

(l) the appropriate air quality permit application fee required under ARM 17.8.504.

(5) An applicant is not required to submit information previously filed with the department. If an applicant does not want to submit information that has been submitted previously to the department, the applicant shall specify in the application the information previously submitted, and, wherever possible, shall specify the date upon which the information was submitted. Any information the department determines is in its possession becomes part of the application.

(6) Section 75-2-105, MCA, specifies the procedure for filing a declaratory judgment action to establish the existence, and confidential status of, trade secret information provided in a permit application.

(7) An applicant for a permit shall notify the public of the application by legal publication in a newspaper of general circulation in the area affected by the application. The notice must be published within 10 days before or after submittal of the application. The form of the notice must be as provided to the applicant by the department.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE VI CONDITIONS FOR ISSUANCE AND DENIAL OF PERMIT

(1) When the department issues a Montana air quality permit, the permit must authorize the construction and operation of the facility or emitting unit subject to the conditions in the permit and to the requirements of this subchapter. The permit must contain any conditions necessary to assure compliance with the Clean Air Act of Montana and rules adopted under that Act.

(2) The permit may contain a schedule for specified permit conditions to become effective, subject to the time limits stated in [Rule XII(2)]. The department may extend a deadline specified in the schedule, but an extension may not exceed five years.

(3) A Montana air quality permit may not be issued for a new or modified facility or emitting unit unless the applicant demonstrates that the facility or emitting unit can be expected to operate in compliance with the Clean Air Act of Montana and rules adopted under that Act, the federal Clean Air Act and rules promulgated under that Act (as incorporated by reference in [Rule XVI]), and any applicable requirement contained in the Montana state implementation plan (as incorporated by reference in [Rule XVI]), and that it will not cause or contribute to a violation of any Montana or national ambient air quality standard.

(4) The department shall issue a Montana air quality permit for the following unless the department demonstrates that the emitting unit does not operate or is not expected to operate in compliance with applicable rules, standards, or other requirements:

(a) emitting units constructed or installed between November 23, 1968, and March 16, 1979; and

(b) emitting units constructed or installed before November 23, 1968, and modified between November 23, 1968, and March 16, 1979.

(5) In a Montana air quality permit, the department shall identify those conditions that are derived from state law, and are not derived from the federal Clean Air Act, 42 U.S.C. 7401, et seq., the Montana state implementation plan, or other federal air quality requirements. Compliance with these conditions is not required by the state implementation plan, and is not necessary for attainment or maintenance of federal ambient air quality standards. These conditions must be identified in the permit as "state-only," and are not intended by the department to be enforceable under federal law.

(6) Nothing in this subchapter obligates the department to issue a Montana air quality permit. The department may subsequently order cessation of initial construction activities, decide not to issue the permit, or issue a permit that diminishes or renders useless the value of work completed prior to permit issuance.

(7) If the department denies an application for a Montana air quality permit it shall notify the applicant in writing of the reasons for the permit denial and advise the

applicant of the right to appeal the department's decision to the board as provided in 75-2-211, MCA. Service of the department's decision to deny a permit must be made as provided in the Montana Rules of Civil Procedure, except that the applicant may agree in writing to service by mail.

(8) If the department denies an application for a Montana air quality permit, it may not accept any further air quality permit application from the owner or operator for that project for which the permit was sought until:

(a) the time for requesting a hearing before the board has expired; or

(b) if a hearing before the board is requested, the board has issued a final decision in the matter; or

(c) the applicant has submitted additional information in writing that adequately addresses the reasons for denial.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE VII EMISSION CONTROL REQUIREMENTS (1) The owner or operator of a new or modified facility or emitting unit for which a Montana air quality permit is required by this subchapter shall install on the new or modified facility or emitting unit the maximum air pollution control capability that is technically practicable and economically feasible, except that:

(a) BACT must be utilized.

(i) Existing emitting units and those emitting units constructed or installed after March 16, 1979, that were not previously subject to this subchapter become subject to this rule when any modification to the emitting unit requires a Montana air quality permit, however, only the specific emitting unit that is modified becomes subject to this rule.

(b) The lowest achievable emission rate must be met to the extent required by ARM Title 17, chapter 8, subchapter 9, for those emitting units subject to that subchapter.

(2) The owner or operator of a new or modified facility or emitting unit for which a permit is required by this subchapter shall operate all equipment to provide the maximum air pollution control for which it was designed.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE VIII INSPECTION OF PERMIT (1) Current air quality permits must be made available for department inspection at

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the location of the facility or emitting unit for which the permit has been issued, unless the permittee and the department mutually agree on a different location.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE IX COMPLIANCE WITH OTHER REQUIREMENTS

(1) This subchapter does not relieve any owner or operator of the responsibility for complying with any applicable federal or Montana statute, rule or board or court order, except as specifically provided in this subchapter.

(2) Issuance of a Montana air quality permit does not affect the responsibility of a permittee to comply with the applicable requirements of any control strategy contained in the Montana state implementation plan.

(3) A permittee may not commence operation of a facility or emitting unit if construction, modification or installation has been completed in such a manner that the facility or emitting unit cannot operate in compliance with applicable statutes, rules, or requirements specified in the permit.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE X REVIEW OF PERMIT APPLICATIONS

(1) Except for applications subject to [Rule XI], when an application for a permit does not require an environmental impact statement, the application is not considered filed until the owner or operator has submitted to the department all required fees and all information and completed application forms.

(2) The department shall notify the applicant in writing within 30 days after receiving an application if an application is incomplete. The notice must list the reasons the application is considered incomplete, any additional information required, and the date by which the applicant must submit any additional required information. If the requested additional information is not submitted by the date specified by the department in the notice, the application is considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. If the department receives additional application information, whether prior to a determination of completeness or in response to a notice of incompleteness, the 30-day application completeness review period begins again.

(3) Within 40 days after receiving a complete application for a permit, the department shall make a preliminary determination as to whether the permit should be issued, issued with conditions, or denied.

(4) After making a preliminary determination, the department shall notify those members of the public who requested such notification subsequent to the notice required by [Rule V(7)] and the applicant of the department's preliminary determination. The notice must specify that comments may be submitted on the information submitted by the applicant and on the department's preliminary determination. The notice must also specify the following:

(a) that a complete copy of the application and the department's analysis of the application is available from the department;

(b) the date by which all comments on the preliminary determination must be submitted in writing, which must be within 15 days after the notice is mailed; and

(c) that unless the review period is extended pursuant to (5) of this rule, a final decision must be made within 60 days after a complete application is submitted to the department as required by 75-2-211, MCA. The notice must specify the date upon which the 60-day review period expires, the person from whom a copy of the final decision may be obtained, and the procedure for requesting a hearing before the board concerning the department's final decision.

(5) The time for issuing a final decision may be extended for 30 days by written agreement of the department and the applicant. The department may grant additional 30-day extensions at the request of the applicant.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE XI ADDITIONAL REVIEW OF PERMIT APPLICATIONS

(1) When an application for a Montana air quality permit requires an environmental impact statement under the Montana Environmental Policy Act, 75-1-101, et seq., MCA, the procedures for public review are those required by the Montana Environmental Policy Act and the rules adopted by the board and department to implement the Act, ARM Title 17, chapter 4, subchapter 6, and 17.4.701 through 17.4.703.

(2) When an application for a Montana air quality permit is also an application for certification under the Major Facility Siting Act, public review is governed by the rules implementing that Act, ARM Title 17, chapter 20.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE XII DURATION OF PERMIT (1) A Montana air quality permit is in effect until the permit is revoked under [Rule XIII], amended under [Rule XIV], or modified under [Rule V]. Portions of an air quality permit may be revoked, amended, or modified without invalidating the remainder of the permit.

(2) A permit issued prior to construction or installation of a new or modified facility or emitting unit may provide that the permit or a portion of the permit will expire unless construction or installation is commenced within the time specified in the permit, which may not be less than one year or more than three years after the permit is issued.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE XIII REVOCATION OF PERMIT (1) The department may revoke a Montana air quality permit or any portion of a permit upon written request of the permittee, or for violation of any requirement of the Clean Air Act of Montana, rules adopted under that Act, the federal Clean Air Act and rules promulgated under that Act (as incorporated by reference in [Rule XVI]), or any applicable requirement contained in the Montana state implementation plan (as incorporated by reference in [Rule XVI]).

(2) The department shall notify the permittee in writing of its intent to revoke a permit or a portion of a permit. The department shall serve the notice as provided in Rule VI(7). The department's decision to revoke a permit or any portion of a permit becomes final when 15 days have elapsed after service of the notice unless the permittee requests a hearing before the board.

(3) When the department revokes a permit under this rule, the permittee may request a hearing before the board. A hearing request must be in writing and must be filed with the board within 15 days after service of the department's notice of intent to revoke the permit. Filing a request for a hearing postpones the effective date of the department's decision until issuance of a final decision by the board.

(4) A hearing under this rule is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE XIV ADMINISTRATIVE AMENDMENT TO PERMIT

(1) The department may amend a Montana air quality permit, or any portion of a permit, for the following reasons:

(a) changes in any applicable rules adopted by the board;

(b) changes in operation that do not result in an increase in emissions. The owner or operator of a facility may not increase the facility's emissions beyond permit limits unless the increase meets the criteria in [Rule IV(1)(a)] for a de minimis change not requiring a permit, or unless the owner or operator applies for and receives another permit in accordance with [Rule V], [Rule VI], [Rule VII], [Rule VIII] and [Rule IX], and with all applicable requirements in ARM Title 17, chapter 8, subchapters 8, 9, and 10;

(c) administrative errors in the permit that do not affect substantive provisions of the permit.

(2) The department shall notify the permittee in writing of any proposed amendments to the permit. The department shall serve the notice as provided for in [Rule VI(7)]. The permit is deemed amended in accordance with the notice when 15 days have elapsed after service of the notice unless the permittee requests a hearing before the board.

(3) When the department amends a permit under this rule, the permittee may request a hearing before the board. A hearing request must be in writing and must be filed with the board within 15 days after service of the department's notice of intent to amend the permit. Filing a request for hearing postpones the effective date of the department's decision until issuance of a final decision by the board.

(4) A hearing under this rule is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE XV TRANSFER OF PERMIT (1) A Montana air quality permit may be transferred from one location to another if:

(a) the department receives a complete notice of intent to transfer location, including:

(i) written notice of intent to transfer location on forms provided by the department; and

(ii) documentation that the permittee has published notice of the intended transfer by means of a legal publication in a newspaper of general circulation in the area to which the transfer is to be made. The notice must include a statement that public comment will be accepted by the department for 15 days after the date of publication and that comments should be addressed to: Air Quality Permitting Section, Air & Waste Management Bureau, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901;

(b) the permitted facility will operate in the new location for less than one year;

(c) the permitted facility can be expected to operate in compliance with:

(i) the Clean Air Act of Montana and rules adopted under that Act, including the ambient air quality standards; and

(ii) the Montana state implementation plan.

(d) the owner or operator of the permitted facility complies with ARM Title 17, chapter 8, subchapters 9 and 10, as applicable.

(2) A Montana air quality permit may be transferred from one owner or operator to another if the department receives written notice of intent to transfer, including the names and authorized signatures of the transferor and the transferee.

(3) The department may not approve or conditionally approve a permit transfer if approval would result in a violation of the Clean Air Act of Montana or rules adopted under that Act, including the ambient air quality standards. If the department does not approve, conditionally approve, or deny a permit transfer within 30 days after receipt of a complete notice of intent to transfer, as described in (1)(a) or (2) of this rule, the transfer is deemed approved.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE XVI INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference:

(a) 40 CFR Part 51, subpart I, specifying requirements for state programs for issuing Montana air quality permits;

(b) 40 CFR Part 51, Appendix M, specifying recommended test methods for state implementation plans;

(c) 40 CFR Part 52, subpart BB specifying the Montana state implementation plan for controlling air pollution in Montana;

(d) 40 CFR 52.21, specifying requirements for prevention of significant deterioration of air quality;

(e) 40 CFR Part 60, specifying standards of performance for new stationary sources;

(f) 40 CFR Part 61, specifying emission standards for hazardous air pollutants;

(g) Tables 4-1 and 4-3 of the Department of Environmental Quality Air Quality Health Risk Assessment Procedures/Model, January 1995; and

(h) 42 USC 7412, et seq., listing hazardous air pollutants.

(2) A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Air & Waste Management Bureau, Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703) 321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and Information, (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, and at the libraries of each of the 10 EPA regional offices.

(4) Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington DC 20402.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-204, 75-2-211, MCA

RULE XVII ADDITIONAL REQUIREMENTS FOR INCINERATORS

(1) An applicant for a Montana air quality permit for an incineration facility subject to 75-2-215, MCA, shall submit a human health risk assessment protocol and a human health risk assessment as part of the application. The human health risk assessment must demonstrate that the ambient concentrations of pollutants resulting from emissions from the incineration facility subject to 75-2-215, MCA, constitute no more than a negligible risk to the public health, safety, and welfare and to the environment. At a minimum, the human health risk assessment must meet the following requirements:

(a) The human health risk assessment must include an emissions inventory listing potential emissions of all pollutants specified in the federal Clean Air Act Hazardous

Air Pollutants List (as defined in section 112(b) of the FCAA).

(b) A characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emitting unit at the facility must be submitted as part of the permit application.

(c) The human health risk assessment must address the impacts of all pollutants inventoried in (a) above, except as provided below. Pollutants may be excluded from the human health risk assessment if the department determines that exposure from inhalation is the only appropriate pathway to consider in the human health risk assessment and if:

(i) the potential to emit the pollutant is less than 1.28×10^{-13} grams per second, if the incineration facility subject to 75-2-215, MCA, has a stack height of at least 2 meters, a stack velocity of at least 0.645 meters per second, and a stack exit temperature of at least 800° F, and there is a distance of at least five meters from the stack to the property boundary; or

(ii) the ambient concentrations of the pollutants (calculated using the potential to emit; enforceable limits or controls may be considered) are less than the levels specified in Table 1 or Table 2. The department shall periodically review accepted toxicity value databases to determine if the de minimis levels in (i) and (ii) should be updated.

(d) The human health risk assessment must address risks from all appropriate exposure pathways. For incineration facilities subject to 75-2-215, MCA, that do not emit or emit only minute amounts of hazardous air pollutants contained in Tables 4-1 or 4-2 of the department's health risk assessment procedures/model the application need address only impact from the inhalation exposure pathway and may use a department supplied screening model to assess human health risk.

(e) The human health risk assessment must address the human health risk impact of all hazardous air pollutants, as described in (a) above, from the emitting unit or units that constitutes the incineration facility subject to 75-2-215, MCA, from all other existing incineration facilities subject to 75-2-215, MCA, at the facility, and from all other new or existing emitting units solely supporting any incineration facility subject to 75-2-215, MCA, such as fugitive emissions from fuel storage. Emissions from existing emitting units that partially support the incineration facility, but that do not change the type or amount of emissions allowed under any existing permit in effect at the time of the permit application, need not be considered in the human health risk

assessment. If an existing emitting unit, wholly or partially supporting the incineration facility, increases the types or amount of its emissions, so that a permit modification is required, that portion of the emissions increase attributable to the support of the incineration facility must be considered in the human health risk assessment.

(f) The health risk assessment must be performed in accordance with accepted human health risk assessment practices, or state or federal guidelines in effect at the time the human health risk assessment is performed, and must address impacts on sensitive populations. The human health risk must be calculated using the emitting unit's potential to emit. Enforceable limits or controls may be considered. The human health risk assessment procedures used may be modified if site-specific conditions warrant use of alternative procedures to appropriately assess human health risk.

(g) As part of the application, the applicant shall submit to the department a human health risk assessment protocol detailing the human health risk assessment procedures. At a minimum, the human health risk assessment protocol must include a description of the pollutants considered in the analysis, methods used in compiling the emission inventory, ambient dispersion models and modeling procedures used, toxicity values for each pollutant, exposure pathways and assumptions, any statistical analysis applied and any other information necessary for the department to review the adequacy of the human health risk assessment.

(h) A summary of the human health risk assessment protocol must be included in the permit analysis. The summary must clearly define the scope of the risk assessment, must describe the exposure pathways used and must specify any pollutants identified in the emission inventory that were not required to be included in the human health risk assessment. The summary must also state whether, and to what extent, the impacts of existing emissions, or the synergistic effect of combined pollutants, were considered in the final human health risk level calculated to determine compliance with the negligible risk standard. The summary must also state that environmental effects unrelated to human health were not considered in determining compliance with the negligible risk standard, but were evaluated as required by the Montana Environmental Policy Act, in determining compliance with all applicable rules or other requirements requiring protection of public health, safety, and welfare and the environment.

(i) The department may impose additional requirements for the human health risk assessment, on a case-by-case basis,

if the department reasonably believes that the type or amount of material being incinerated, the proximity to sensitive populations, short-term emissions variations, acute health impact, or the local topographical or ventilation conditions require a more detailed health risk assessment to adequately define the potential public health impact. Additional requirements for the human health risk assessment may include specific emission inventory procedures for determining emissions from the incineration facility subject to 75-2-215, MCA, use of more sophisticated air dispersion models or modeling procedures and consideration of additional exposure pathways.

TABLE 1

<u>CAS #</u>	<u>CHEMICAL</u>	<u>CANCER ANNUAL ($\mu\text{g}/\text{m}^3$)</u>
75070	Acetaldehyde	4.5455e-02
79061	Acrylamide	7.6923e-05
107131	Acrylonitrile	1.4706e-03
1332214	Asbestos	5.1546e-04
71432	Benzene	1.2048e-02
92875	Benzidine	1.4925e-06
117817	Bis(2-Ethylhexyl) Phthalate (DEHP)	4.1667e-02
542881	Bis(Chloromethyl) Ether	1.6129e-06
75252	Bromoform	9.0909e-02
106990	1,3-Butadiene	3.5714e-04
56235	Carbon Tetrachloride	6.6667e-03
57749	Chlordane	2.7027e-04
67663	Chloroform	4.3478e-03
126998	Chloroprene	7.6923e-01
132649	Dibenzofurans	2.6316e-09
96128	1,2-Dibromo- 3-Chloropropane	5.0000e-05
106467	1,4-Dichlorobenzene (p)	9.0909e-03
91941	3,3-Dichlorobenzidene	2.9412e-04
111444	Dichloroethyl Ether	3.0303e-04
123911	1,4-Dioxane (1,4-Diethyleneoxide)	1.2987e-02
122667	1,2-Diphenylhydrazine	4.5455e-04
106898	Epichlorohydrin	8.3333e-02
51796	Ethyl Carbamate (Urethane)	3.4483e-04
106934	Ethylene Dibromide	4.5455e-04
107062	Ethylene Dichloride	3.8462e-03
75218	Ethylene Oxide	1.1364e-03

50000	Formaldehyde	7.6923e-03
76448	Heptachlor	7.6923e-05
118741	Hexachlorobenzene	2.1739e-04
87683	Hexachlorobutadiene	4.5455e-03
67721	Hexachloroethane	2.5000e-02
302012	Hydrazine	2.0408e-05
58899	Lindane (All Isomers)	9.0909e-05
75092	Methylene Chloride	2.1277e-01
62759	N-Nitrosodimethylamine	7.1429e-06
87865	Pentachlorophenol	2.1739e-02
1336363	Polychlorinated Biphenyls	7.1429e-05
75569	Propylene Oxide	2.7027e-02

		CANCER
<u>CAS #</u>	<u>CHEMICAL</u>	<u>ANNUAL (µg/m³)</u>
1746016	2,3,7,8-TCDD	2.6316e-09
79345	1,1,2,2-Tetra- chloroethane	1.7241e-03
127184	Tetrachloro- ethylene (Perch)	1.6949e-02
8001352	Toxaphene	3.1250e-04
79005	1,1,2-Tri- chloroethane	6.2500e-03
79016	Trichloro- ethylene	5.0000e-02
88062	2,4,6-Tri- chlorophenol	3.2258e-02
75014	Vinyl Chloride	1.2821e-03
75354	Vinylidene Chloride	2.0000e-03
	Arsenic Compounds	2.3256e-05
	Beryllium Compounds	4.1667e-05
	Cadmium Compounds	5.5556e-05
	Chromium Compounds	8.3333e-06
	Coke Oven Emissions	1.6129e-04
	Nickel Compounds	3.8462e-04
	Polycyclic Organic Matter	
56553	Benz(a)anthracene	5.8824e-05
205992	Benzo(b)fluoranthene	5.8824e-05
207089	Benzo(k)fluoranthene	5.8824e-05
50328	Benzo(a)pyrene	5.8824e-05
53703	Dibenz(a,h)anth- racene	5.8824e-05
193395	Indeno(1,2,3-cd) pyrene	5.8824e-05

TABLE 2

<u>CAS #</u>	<u>CHEMICAL</u>	NON-CANCER CHRONIC ANNUAL	NON-CANCER ACUTE ANNUAL
		<u>($\mu\text{g}/\text{m}^3$)</u>	<u>($\mu\text{g}/\text{m}^3$)</u>
75070	Acetaldehyde	9.0000e-02	
107028	Acrolein	2.2000e-04	2.5000e-02
79061	Acrylamide	7.0000e-03	
79107	Acrylic Acid	1.0000e-02	
107131	Acrylonitrile	2.0000e-02	
107051	Allyl Chloride	1.0000e-02	
62533	Aniline	1.0000e-02	
71432	Benzene	7.1000e-01	
92875	Benzidine	1.0000e-01	
100447	Benzyl Chloride	1.2000e-01	5.0000e-01
117817	Bis(2-Ethylhexyl) Phthalate (DEHP)	7.0000e-01	
75150	Carbon Disulfide	7.0000e+00	
56235	Carbon Tetra- chloride	2.4000e-02	1.9000e+00
7782505	Chlorine	7.1000e-01	2.3000e-01
532274	2-Chloroaceto- phenone	3.0000e-04	
108907	Chlorobenzene	7.0000e-01	
67663	Chloroform	3.5000e-01	
126998	Chloroprene	1.0000e-02	
1319773	Cresols/Cresylic Acid	1.8000e+00	
95487	o-Cresol	1.8000e+00	
108394	m-Cresol	1.8000e+00	
106445	p-Cresol	1.8000e+00	
132649	Dibenzofurans	3.5000e-08	
96128	1,2-Dibromo-3- Chloropropane	2.0000e-03	
106467	1,4-Dichloro- benzene (p)	8.0000e+00	
542756	1,3-Dichloro- propene	2.0000e-01	
62737	Dichlorvos	5.0000e-03	
68122	Dimethyl Formamide	3.0000e-01	
123911	1,4-Dioxane (1,4-Diethyleneoxide)	4.0000e-02	2.0000e+01
106898	Epichlorohydrin	1.0000e-02	
106887	1,2-Epoxybutane	2.0000e-01	

140885	Ethyl Acrylate	4.8000e-01	
100414	Ethyl Benzene	1.0000e+01	
75003	Ethyl Chloride (Chloroethane)	1.0000e+02	
106934	Ethylene Dibromide	4.6000e-02	
107062	Ethylene Di- chloride	9.5000e-01	
75218	Ethylene Oxide	6.0000e+00	
50000	Formaldehyde	3.6000e-02	3.7000e+00
118741	Hexachlorobenzene	2.8000e-02	
77474	Hexachloro- cyclopentadiene	2.4000e-03	
822060	Hexamethylene- 1,6-Diisocyanate	1.0000e-04	
110543	Hexane	2.0000e+00	
302012	Hydrazine	2.4000e-03	
7647010	Hydrochloric Acid	2.0000e-01	3.0000e+01
7664393	Hydrogen Flouride (HF Acid)	5.9000e-02	5.8000e+00
58899	Lindane (All Isomers)	1.0000e-02	
108316	Maleic Anhydride	2.4000e-02	1.0000e-01
67561	Methanol	6.2000e+00	
		NON-CANCER CHRONIC ANNUAL ($\mu\text{g}/\text{m}^3$)	NON-CANCER ACUTE ANNUAL ($\mu\text{g}/\text{m}^3$)
<u>CAS #</u>	<u>CHEMICAL</u>		
74839	Methyl Bromide (Bromomethane)	5.0000e-02	
71556	Methyl Chloroform	3.2000e+00	1.9000e+03
78933	Methyl Ethyl Ketone (2-Butanone)	1.0000e+01	
624839	Methyl Isocyanate	3.6000e-03	
80626	Methyl Metha- crylate	9.8000e+00	
1634044	Methyl Tert Butyl Ether	3.0000e+01	
75092	Methylene Chloride	3.0000e+01	3.5000e+01
101688	Methylene Diphenyl Diisocyanate	2.0000e-04	
101779	4,4'-Methylene- dianiline	1.9000e-02	
91203	Naphthalene	1.4000e-01	
98953	Nitrobenzene	1.7000e-02	
79469	2-Nitropropane	2.0000e-01	

87865	Pentachloropheno	12.0000e-03	
108952	Phenol	4.5000e-01	
75445	Phosgene	1.2000e+00	
7803512	Phosphine	3.0000e-03	
7723140	Phosphorus	7.0000e-04	
85449	Phthalic Anhydride	7.0000e+01	
1336363	Polychlorinated	1.2000e-02	
	Biphenyls		
78875	Propylene Di- chloride	4.0000e-02	
75569	Propylene Oxide	3.0000e-01	1.0000e+01
100425	Styrene	1.0000e+01	
1746016	2,3,7,8-TCDD	3.5000e-08	
127184	Tetrachloro- ethylene (Perch)	3.5000e-01	6.8000e+01
108883	Toluene	4.0000e+00	
584849	2,4-Toluene Di- isocyanate	7.0000e-04	
79016	Trichloroethylene	6.4000e+00	
121448	Triethylamine	7.0000e-02	
108054	Vinyl Acetate	2.0000e+00	
593602	Vinyl Bromide	3.0000e-02	
75014	Vinyl Chloride	2.6000e-01	
75354	Vinylidene Chloride	3.2000e-01	
1330207	Xylenes (Isomers and Mixture)	3.0000e+00	4.4000e+01
	Antimony Compounds	2.0000e-03	
	Arsenic Compounds	5.0000e-03	
	Beryllium Compounds	4.8000e-05	
	Cadmium Compounds	3.5000e-02	
	Chromium Compounds	2.0000e-05	
	Cyanide Compounds	7.0000e-01	3.3000e+01
	Ethyl Glycol	2.0000e-01	
	But Ether		
	Ethyl Glycol	3.7000e+00	
	Ethyl Ether		
	Ethyl Gly MonoBut Ether	1.5000e+01	
	Ethyl Gly Mono- Ether	2.0000e+00	
	Ethyl Gly Ethyl Ether Acetate	6.4000e-01	
	Ethyl Glycol	2.0000e-01	3.2000e+00
	Methyl Ether		

Ethyl Gly Methyl	5.7000e-01	
Ether Acetate		
Ethyl Gly Mono-	1.6000e+01	
Ethyl Ether Acetate		
Lead Compounds	1.5000e-02	
Manganese Com-	5.0000e-04	
pounds		
Mercury Compounds	3.0000e-03	3.0000e-01
Fine Mineral	2.4000e-01	
Fibers		
Nickel Compounds	2.4000e-03	1.0000e-02
Selenium Compounds	5.0000e-03	2.0000e-02

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, 75-2-215, MCA

4. The rules proposed for repeal are as follows:

17.8.701 DEFINITIONS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, 75-2-215, MCA), located at page 17-421, Administrative Rules of Montana. This rule would be replaced by RULE I, DEFINITIONS.

17.8.702 INCORPORATION BY REFERENCE (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-211, 75-2-215, MCA), located at page 17-424, Administrative Rules of Montana. This rule would be replaced by RULE XVI, INCORPORATION BY REFERENCE.

17.8.704 GENERAL PROCEDURES FOR AIR QUALITY PRECONSTRUCTION PERMITTING (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-427, Administrative Rules of Montana. This rule would be replaced by RULE II, MONTANA AIR QUALITY PERMITS--WHEN REQUIRED.

17.8.705 WHEN PERMIT REQUIRED--EXCLUSIONS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-429, Administrative Rules of Montana. This rule would be replaced by RULE II, MONTANA AIR QUALITY PERMITS - WHEN REQUIRED; RULE III, MONTANA AIR QUALITY PERMITS - GENERAL EXCLUSIONS; and RULE IV, MONTANA AIR QUALITY PERMITS - EXCLUSION FOR DE MINIMIS CHANGES.

17.8.706 NEW OR ALTERED SOURCES AND STACKS--PERMIT APPLICATION REQUIREMENTS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, 75-2-215, MCA), located at page 17-431, Administrative Rules of Montana. This rule would be replaced by RULE V, NEW OR MODIFIED EMITTING UNITS--PERMIT

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APPLICATION REQUIREMENTS; and RULE XVII, ADDITIONAL REQUIREMENTS FOR INCINERATORS.

17.8.707 WAIVERS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-439, Administrative Rules of Montana. This rule would be replaced by RULE V, NEW OR MODIFIED EMITTING UNITS-- PERMIT APPLICATION REQUIREMENTS.

17.8.710 CONDITIONS FOR ISSUANCE OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-441, Administrative Rules of Montana. This rule would be replaced by RULE VI, CONDITIONS FOR ISSUANCE AND DENIAL OF PERMIT; and RULE IX, COMPLIANCE WITH OTHER REQUIREMENTS.

17.8.715 EMISSION CONTROL REQUIREMENTS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-443, Administrative Rules of Montana. This rule would be replaced by RULE VII, EMISSION CONTROL REQUIREMENTS.

17.8.716 INSPECTION OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-443, Administrative Rules of Montana. This rule would be replaced by RULE VIII, INSPECTION OF PERMIT.

17.8.717 COMPLIANCE WITH OTHER STATUTES AND RULES (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-443, Administrative Rules of Montana. This rule would be replaced by RULE IX, COMPLIANCE WITH OTHER REQUIREMENTS.

17.8.720 PUBLIC REVIEW OF PERMIT APPLICATIONS (AUTH: 75-2-111, 75-2-204, 75-20-216(3), MCA; IMP: 75-2-204, 75-2-211, 75-20-216(3), MCA), located at page 17-445, Administrative Rules of Montana. This rule would be replaced by RULE V, NEW OR MODIFIED EMITTING UNITS-- PERMIT APPLICATION REQUIREMENTS; RULE X, REVIEW OF PERMIT APPLICATIONS; and RULE XI, ADDITIONAL REVIEW OF PERMIT APPLICATIONS.

17.8.730 DENIAL OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-449, Administrative Rules of Montana. This rule would be replaced by RULE VI, CONDITIONS FOR ISSUANCE AND DENIAL OF PERMIT.

17.8.731 DURATION OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-449,

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Administrative Rules of Montana. This rule would be replaced by RULE XII, DURATION OF PERMIT.

17.8.732 REVOCATION OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-449, Administrative Rules of Montana. This rule would be replaced by RULE XIII, REVOCATION OF PERMIT.

17.8.733 MODIFICATION OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-450, Administrative Rules of Montana. This rule would be replaced by RULE XIV, ADMINISTRATIVE AMENDMENTS TO PERMIT.

17.8.734 TRANSFER OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-451, Administrative Rules of Montana. This rule would be replaced by RULE XV, TRANSFER OF PERMIT.

The Board is proposing to repeal ARM Title 17, chapter 8, subchapter 7, "Permit, Construction and Operation of Air Contaminant Sources," and adopt a new subchapter covering the same subjects. The Board is proposing to repeal the existing rules and adopt new rules because of the extent of the necessary revisions to the rules.

In the past, there has been considerable confusion among the regulated community and the public concerning the meaning of the air quality preconstruction permit rules. The proposed new rules would clarify permit requirements and are necessary to make the rules more understandable. The Department of Environmental Quality developed the proposed new rules in conjunction with a working group of representatives of the regulated community and organizations interested in air quality issues.

New Rule I, "Definitions," would replace existing ARM 17.8.701, "Definitions," and incorporate new terms used in the proposed new rules. For clarity, the phrases "emitting unit" and "facility" would be substituted for the existing term "source." References in the current rules to "stacks" would be eliminated because the Department regulates stacks as part of the associated emitting units, so separate references to stacks are not necessary. For clarity, the definition of "construct" or "construction" would be revised to include examples of activities that are considered to constitute initiation of construction. Definitions of "lowest achievable emission rate" or "LAER" and "major emitting facility" would be deleted because the phrase "major emitting facility" no

longer would be used in the rules, and the phrase "lowest achievable emission rate" or "LAER" already is defined in ARM 17.8.901(10). The new rule would add necessary definitions for the following terms and phrases used in the proposed new rules: "day"; "emitting unit"; "facility"; "install" or "installation"; "modify"; "Montana air quality permit"; "residential, institutional, or commercial"; "routine"

New Rule II, "Montana Air Quality Permits--When Required," would replace existing ARM 17.8.704, "General Procedures For Air Quality Preconstruction Permitting," and portions of existing ARM 17.8.705, "When Permit Required--Exclusions." The new rule would specify the sources of air contaminants that are subject to the permit requirements. The new rule also would substitute a new name for the permit, "Montana air quality permit," in place of the current name, "preconstruction permit." The current name has been confusing to the regulated community, and the change is necessary to avoid the incorrect assumption that the permit applies only to construction.

New Rule III, "Montana Air Quality Permits--General Exclusions," would replace portions of existing ARM 17.8.705, "When Permit Required--Exclusions." The new rule would specify the air contaminant sources that are excluded from the permit requirement. In the existing rules, the exclusions are combined with applicability provisions in ARM 17.8.705. Under the new rule, the following sources would be deleted from the list of excluded sources and would require a Montana air quality permit if the subchapter otherwise applies to the source: food service establishments; sources for which emissions are calculated by BTU heat input; and ventilation systems for animal housing. The Board is proposing to delete these exclusions because it believes that any operation with potential emissions above the general 25 ton per year threshold should be subject to the air quality permit requirements. Most food service establishments still would be excluded under the general 25 ton per year exclusion. New Rule III also would include a provision clarifying when emergency equipment is excluded from the permit requirement. For clarity, equipment used for routine maintenance, repair, or replacement would be added to the list of exclusions.

New Rule IV, "Montana Air Quality Permits--Exclusion For De Minimis Changes," would replace the portions of existing ARM 17.8.705, "When Permit Required--Exclusions," that include

the exclusion from the permit requirement for de minimis changes. The exclusion now is included with other exclusions and applicability provisions in ARM 17.8.705. New Rule IV(2), along with New Rule XIV(3), would clarify that the Department may amend a permit to change or add permit conditions, related to a de minimis change, if the owner or operator agrees to the change or addition and would clarify that only the permittee may request a hearing before the Board concerning a permit amendment that is related to a de minimis change, and that is initiated by the Department.

New Rule V, "New Or Modified Emitting Units--Permit Application Requirements," would replace portions of existing ARM 17.8.706, "New Or Altered Sources And Stacks--Permit Application Requirements," existing ARM 17.8.707, "Waivers," and portions of existing ARM 17.8.720, "Public Review Of Permit Applications." The new rule would clarify that the Department is not obligated to issue an air quality permit upon receipt of an application, clarify the requirement that permit applications be certified for completeness and accuracy, and clarify the information that must be included in descriptions of shakedown procedures. The existing requirements for submitting "post application" information would be deleted. A new provision would advise readers of the statutory procedures for maintaining the confidentiality of trade secret information that may be included in a permit application.

New Rule VI, "Conditions For Issuance And Denial Of Permit," would replace portions of existing ARM 17.8.710, "Conditions For Issuance Of Permit," and existing ARM 17.8.730, "Denial Of Permit." The new rule would specify the conditions for issuance or denial of a permit application. Existing ARM 17.8.710(3), which prohibits operation unless the applicant demonstrates that construction has occurred in compliance with the permit, would be moved to New Rule IX. New Rule VI also would include provisions for identifying federally enforceable and state-only conditions in a permit. This is necessary because the state should have exclusive enforcement authority concerning permit conditions that are necessary only to meet state requirements, but not federal requirements. Without this specification in the permit, permit conditions become federally enforceable by virtue of the permit becoming part of the State Implementation Plan.

New Rule VII, "Emission Control Requirements," would replace existing ARM 17.8.715, "Emission Control Requirements." The new rule would clarify that emission control requirements, including best available control technology (BACT), apply to previously unpermitted, older units that are modified in a manner requiring an air quality permit.

New Rule VIII, "Inspection Of Permit," would replace existing ARM 17.8.716, "Inspection Of Permit." The new rule would add a provision specifying that the owner or operator and the Department may mutually agree on a location other than the permitted facility or emitting unit for making the air quality permit available for inspection. The present rule requires the owner or operator to maintain the permit at the location of the permitted facility. The proposed new provision could be more convenient for owners and operators of multiple facilities, such as natural gas compressor stations, that are subject to separate permits, and would be more convenient for Department inspectors in the field who could review multiple permits issued to an owner or operator without having to travel to each permitted location.

New Rule IX, "Compliance With Other Requirements," would replace portions of existing ARM 17.8.710, "Conditions For Issuance Of Permit," and existing ARM 17.8.717, "Compliance With Other Statutes And Rules." The new rule would clarify the Department's authority to prohibit operation of a facility or emitting unit if construction has occurred in a manner such that the facility cannot operate in compliance with applicable statutes, rules or permit requirements.

New Rule X, "Review Of Permit Applications," would replace portions of existing ARM 17.8.720, "Public Review Of Permit Applications." The new rule would clarify the procedure for Department review of air quality permit applications, including clarifying that the time for Department review of a permit application does not begin until the Department receives a complete application.

New Rule XI, "Additional Review Of Permit Applications," would, without substantive change, replace portions of existing ARM 17.8.720, "Public Review Of Permit Applications."

New Rule XII, "Duration Of Permit," would replace existing ARM 17.8.731, "Duration Of Permit." The new rule

also would reflect the Department's authority under proposed New Rule XIII to revoke all, or only a portion, of a permit.

New Rule XIII, "Revocation Of Permit," would replace existing ARM 17.8.732, "Revocation Of Permit." In addition to including the existing procedures for revoking a permit, the new rule would add authority for the Department to revoke only a portion of a permit and would provide procedures for permit revocation upon the request of the owner or operator. Authority to revoke only a portion of a permit is necessary to allow an owner or operator to continue to operate part of a facility when only part of the permit is no longer necessary or valid. Adding authority for the owner or operator to request revocation is necessary to avoid the Department having to initiate revocation proceedings when the owner or operator no longer wishes to operate the facility, or part of a facility, and continue to be subject to air quality permit fees.

New Rule XIV, "Administrative Amendment To Permit," would replace existing ARM 17.8.733, "Modification Of Permit." For clarity, under the new rule, the term "amend" would be substituted for the term "modify." The new rule also would provide the Department with authority to amend a permit to correct administrative errors made in drafting the permit. This is necessary to provide the Department with authority to correct administrative errors made in permit drafting without having to wait until the permittee applies for a new permit for the facility.

New Rule XV, "Transfer Of Permit," would replace existing ARM 17.8.734, "Transfer Of Permit." The new rule would clarify that the Department may deny transfer of a permit only upon determining that the transfer would result in violation of air quality statutes or rules. This revision is necessary to clarify that the Department does not have statutory authority to deny a permit transfer based upon non-air quality factors that the Department is required to consider under the Montana Environmental Policy Act (MEPA).

New Rule XVI, "Incorporation By Reference," would replace existing ARM 17.8.702, "Incorporation By Reference," without substantive change, except for placing the incorporations of federal regulations in numerical order, for easier reference.

New Rule XVII, "Additional Requirements For Incinerators," would, without substantive change, replace the existing requirements in ARM 17.8.706(5), concerning air quality permits for incinerators

5. Concerned persons may submit their data, views or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at "ber@state.mt.us", to be received no later than 5:00 p.m. March 27, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

6. Thomas G. Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at "ber@state.mt.us" or may be made by completing a request form at any rules hearing held by the Board.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

MAR Notice No 17-_____

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell
Joseph W. Russell, M.P.H.,
Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State, _____, 2002.